

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG**

VINCENTE ANDRE NESBY, II,

Plaintiff,

v.

**CIVIL ACTION NO.: 3:13-CV-144
(JUDGE GROH)**

**UNITED STATES OF AMERICA,
LT. SLAGGER, H.S.A. WEAVER,
C/O CARLSON, AND NURSE HALL,**

Defendants.

ORDER ADOPTING OPINION/REPORT AND RECOMMENDATION

On this day, the above-styled matter came before the Court for consideration of the Report and Recommendation of United States Magistrate Judge James E. Seibert. Pursuant to this Court's Local Rules, this action was referred to Magistrate Judge Seibert for submission of a proposed report and a recommendation ("R&R"). Magistrate Judge Seibert filed his R&R on September 9, 2014 [ECF 28]. In that filing, he recommends that this Court dismiss the complaint with prejudice for failure to state a claim upon which relief can be granted and deny as moot the Plaintiff's Motion for Leave to File Exhibit [ECF 26] and Motion to Amend Complaint [ECF 27].

Pursuant to 28 U.S.C. § 636(b)(1)(c), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. Thomas v. Arn, 474 U.S. 140, 150

(1985). Failure to file timely objections constitutes a waiver of *de novo* review and the petitioner's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); Snyder v. Ridenour, 889 F.2d 1363, 1366 (4th Cir. 1989); United States v. Schronce, 727 F.2d 91, 94 (4th Cir. 1984). Objections to Magistrate Judge Seibert's R&R were due within fourteen days of being served with a copy of the same. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). The Plaintiff moved to extend the objections deadline to October 17, 2014. The Court granted this motion and ordered that the Plaintiff file objections, if any, by October 17, 2014. Neither party has filed objections to the R&R. Accordingly, this Court will review the R&R for clear error.

Upon careful review of the report and recommendation, it is the opinion of this Court that the magistrate judge's Report and Recommendation should be, and is, hereby **ORDERED ADOPTED** for the reasons more fully stated in the magistrate judge's report. Accordingly, the Court hereby **DISMISSES** the complaint **WITH PREJUDICE** for failure to state a claim upon which relief can be granted. The Court further **DENIES AS MOOT** the Plaintiff's Motion for Leave to File Exhibit and Motion to Amend Complaint. Accordingly, this matter is **ORDERED STRICKEN** from the active docket of this Court. The Clerk is **DIRECTED** to enter judgment for the Defendants.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to all counsel of record and *pro se* parties.

DATED: October 23, 2014


GINA M. GROH
UNITED STATES DISTRICT JUDGE